

MINUTES OF THE SOLID WASTE MANAGEMENT BOARD MEETING

Indiana Government Center South
402 West Washington Street
Conference Center Room A – 1:30 p.m.
Indianapolis, Indiana
September 19, 2006

The meeting was called to order by Mayor William Graham, Chairperson, at 1:33 p.m. Those present for all or part of the meeting were:

- Mr. Mark Davis
- Mr. Rick Dyar
- Mr. Chuck Himes
- Dr. Lenore Tedesco
- Mr. Jason Ward
- Mr. Howard Cundiff (Proxy, State Department of Health)
- Mr. Chad Frahm (Proxy, Lieutenant Governor's Office)
- Mr. Tom Hohman (Proxy, Department of Natural Resources)
- Ms. Pamela Fisher (Proxy, Indiana Economic Development Corporation)
- Ms. Deborah Albright, Board Counsel

A quorum was present.

In addition, the following Indiana Department of Environmental Management (IDEM) staff members were present for all or part of the meeting:

- Mr. Tom Easterly, Commissioner, IDEM
- Mr. Bruce Palin, Assistant Commissioner, Office of Land Quality
- Mr. Mike Dalton, Chief, Rules, Planning and Outreach Section
- Mr. Steve Mojonier, Rules, Planning and Outreach Section
- Ms. Lynn West, Rules, Planning and Outreach Section
- Ms. Kiran Verma, Rules, Planning and Outreach Section
- Ms. Marjorie Samuel, Rules, Planning and Outreach Section
- Ms. Daniela Klesmith, Engineering, Permits Branch
- Ms. Nancy King, Office of Legal Counsel
- Ms. Ann Long, Office of Legal Counsel

1. APPROVAL OF MINUTES

Mayor Graham asked for additions or corrections to the minutes of the Solid Waste Management Board meeting of July 18, 2006. Mr. Rick Dyar asked that the minutes of July 18, 2006, be amended to read "Acting Chairperson" wherever his name appears. Mayor Graham asked for a motion to approve the minutes as amended. Mr. Chuck Himes so moved and Mr. Howard Cundiff seconded. The motion passed unanimously.

2. IDEM REPORTS

Mayor Graham then invited Mr. Bruce Palin, Assistant Commissioner, Commissioner, to address the Board. Mr. Palin said that he had nothing to report and then asked Ms. Lynn West to present a rules update and other special announcements.

Ms. West introduced Mr. Jason Ward, the new Board member, representing environmental interests. Board members then introduced themselves and briefly

described their functions on the Board. Ms. West distributed the rules project list.

3. Mayor Graham announced the following rulemaking actions:
Rules opened and continued from the July 18, 2006 Board meeting:
 - A. Final Adoption of LSA #05-219, Amendments to Rules Concerning Regulation of Waste Containing PCBs at 329 IAC 4.1. The proposed rule was published May 1, 2006 in the Indiana Register at 29 IR 2639. The hearing was noticed in the Indiana Register on May 1, 2006, and may be found at 29 IR 2654.
 - B. Preliminary Adoption of LSA #05-167, Amendments to Rules at 329 IAC 10-20 and 329 IAC 10-39 Concerning Solid Waste Land Disposal Facilities, Financial Responsibility, and Annual Review and Annual Survey Results. The proposed rule was published in the Indiana Register on April 1, 2006, at 29 IR 2380. The hearing was noticed in the Indiana Register on April 1, 2006, at 29 IR 2391.
 - C. Preliminary Adoption of LSA #05-168, New Rules, Amendments to Rules, and Readoption of Rules Concerning Waste Tire Management at 329 IAC 15. The proposed rule was published in the Indiana Register on May 1, 2006, at 29 IR 2698. The hearing was noticed in the Indiana Register on May 1, 2006, and may be found at 29 IR 2710.
 - D. Preliminary Adoption of LSA #05-296, Amendments to Rules at 329 IAC 10 Concerning Construction/Demolition Waste and Certain Permitting Requirements. The proposed rule was published in the Indiana Register on April 1, 2006, at 29 IR 2391. The hearing was noticed in the Indiana Register on April 1, 2006, and may be found at 29 IR 2397.
 - E. Preliminary Adoption of LSA #05-297, Amendments to Rules at 329 IAC 11 Concerning Solid Waste Processing Facilities. The proposed rule was published in the Indiana Register on May 1, 2006, at 29 IR 2711. The hearing was noticed in the Indiana Register on May 1, 2006, and may be found at 29 IR 2722.

Hearings prior to the consideration of the following rules:

- F. Preliminary adoption of LSA #06-182, Amendments to Rules at 329 IAC 9 Concerning Additional Measures to Protect Ground Water. The proposed rule was published in the Indiana Register on July 1, 2006, at 29 IR 3439. The hearing was noticed in the Indiana Register on July 1, 2006, and can be found at 29 IR 3443.
- G. Preliminary Adoption of LSA #05-234, the Environmental Stewardship Program and Comprehensive Local Environmental Action Network. The proposed rule was published in the Indiana Register on June 1, 2006, at 29 IR 3140. The hearing was noticed in the Indiana Register on June 1, 2006, and can be found at 29 IR 3152

Mayor Graham said that the stated rules, were all included in the either the July 18, 2006 Board packet, or the September 19, 2006 Board packet and are available for public inspection in the Indiana Department of Environmental Management File Room, located on the 12th floor of the Indiana Government Center North, Monday through Friday, between the hours of 8:30 a.m. and 4:30 p.m. Instructions were given to the public regarding offering oral statements and comments to the Board. Due to the large number of items on the agenda, Mayor

Graham said that comments would be limited to five minutes. The court reporter was affirmed.

4. FINAL ADOPTION AMENDMENTS TO RULES CONCERNING WASTE CONTAINING PCBs AT 329 IAC 4.1

Mayor Graham announced the continuation of the hearing to consider #05-219, Amendments Concerning Regulation of Waste Containing PCBs at 329 IAC 4.1, for final adoption.

There was no public comment so the hearing was concluded. There were no questions or discussion from the Board so Mayor Graham asked for a motion to adopt Exhibit A-1, IDEM's suggested changes, to the rule. Mr. Tom Hohman so moved and Dr. Lenore Tedesco seconded. The motion passed unanimously. Then Mayor Graham asked for a motion to final adopt the rule as amended. Mr. Rick Dyar so moved and Mr. Chad Frahm seconded. The motion passed unanimously.

Deborah Albright asked for clarification of the agenda, which listed the rule as both 329 IAC 4.1 and 329 IAC 4. This was a typographical error in an agenda that didn't affect the integrity of the final adoption.

5. PRELIMINARY ADOPTION AMENDMENTS TO RULES AT 329 IAC 10-20 AND 329 IAC 10-39 CONCERNING SOLID WASTE LAND DISPOSAL FACILITIES FINANCIAL RESPONSIBILITY AND ANNUAL REVIEW AND ANNUAL SURVEY RESULTS

Mayor Graham announced the continuation of the hearing to consider #05-167, Amendments to Rules At 329 IAC 10-20 and 329 IAC 10-39 Concerning Solid Waste Land Disposal Facilities, Financial Responsibility, and Annual Review and Annual Survey Results for final adoption. He introduced Exhibit B-1, the draft rule; into the record and asked Ms. Lynn West to comment on the rule.

Ms. West said that the new draft rule, Exhibit B-1, included five changes that were not in the original Exhibit B. She cited the location of each change, why each change was made, and the nature of the change. Please see pages 17 through 19 for a verbatim account of Ms. West's remarks.

Mayor Graham asked for questions from the Board. Mr. Hohman asked for clarification regarding a public comment about additional time to complete aerial surveys. Ms. West responded that aerial surveys should be done close to when the reports are submitted. The months for conducting these surveys changed to October through December. Ms. Daniela Klesmith said that aerial surveys need to be done when there isn't foliage to interfere with the clarity of the photos. Additionally, the rule requires aerial surveys for municipal solid waste landfills, not restricted waste sites, so it didn't apply to the commenter who was concerned about a time extension from the summer months to later in the year. Please see pages 19 through 21 for a verbatim account of this discussion.

Mayor Graham said he had a comment card from Mr. Bill Paraskevas, speaking on behalf of the National Solid Waste Management Association.

Mr. Paraskevas offered a change at 329 IAC 10-39-2(a). It was determined that the change he requested had already been done. Mr. Paraskevas had no further comments. Mayor Graham then concluded the hearing.

Mr. Himes asked for clarification about where the changes were located in the rule.

Ms. Klesmith said that the requested change from Mr. Paraskevas was highlighted in pink in his copy of the rule.

There were no further comments from the Board and no further public comment. Mayor Graham asked for a motion to preliminarily adopt the rule as presented in Exhibit B-1. Mr. Jason Ward so moved and Mr. Hohman seconded. The motion passed unanimously.

6. PRELIMINARYADOPTION NEW RULES, AMENDMENTS TO RULES AND READOPTION OF RULES CONCERNING WASTE TIRE MANAGEMENT AT 329 IAC 15
Mayor Graham announced the continuation of the hearing to consider #05-168, Rules and Readoption of Rules Concerning Waste Tire Management at 329 IAC 15 for preliminary adoption.

Mayor Graham asked for public comments. There were none so the hearing was concluded. Then Mayor Graham asked if the Board had any questions. There were none. Mayor Graham asked for a motion to preliminarily adopt the rule. Dr. Tedesco so moved and Mr. Frahm seconded. The motion passed unanimously.

7. PRELIMINARYADOPTION AMENDMENTS TO RULES CONCERNING CONSTRUCTION/DEMOLITION WASTE AT 329 IAC 10
Mayor Graham announced the continuation of the hearing to consider #05-296, Amendments to Rules Concerning Construction/Demolition Waste at 329 IAC 10 for preliminary adoption.

Mayor Graham asked for comments from the public. There were none, so the hearing was concluded. He asked for comments or questions from the Board. Mr. Davis asked if there had been anything done to provide clarification of the terms "crushed" or "ground" and what materials are considered construction/demolition waste. There were no other questions or comments from the Board.

Mayor Graham asked for a motion to preliminarily adopt the rule. Mr. Howard Cundiff so moved and mentioned that issues concerning clarification mentioned by Mr. Davis may be addressed through the hearing process. Mr. Ward seconded the motion. At this point, Ms. Pam Fisher wanted assurance that Mr. Davis's questions would be addressed after preliminary adoption. Ms. Klesmith said that they expected more comments and that they would work on more specific rule language. (Please see pages 29 through 32 for a verbatim account of this discussion. The motion to preliminarily adopt was passed unanimously.

8. PRELIMINARY ADOPTION AMENDMENTS TO RULES CONCERNING SOLID WASTE PROCESSING FACILITIES AT 329 IAC 11
Mayor Graham announced the continuation of the hearing to consider #05-297, Amendments to Rules Concerning Solid Waste Processing Facilities at 329 IAC 11 for preliminary adoption.

The following individuals offered comment on the rule:

- a. Mr. Nelson Slavic, Environmental Health Management Systems, Inc., Niles, Michigan

- b. Mr. Clifford Duggan, Lake County Solid Waste Management District, Merrillville Indiana.
- c. Mr. Bill Paraskevas, National Solid Waste Management Association, Indianapolis, Indiana (NSWMA).

Mr. Slavic explained that he is a consultant to PEAT International. Mr. Slavic requested revisions to the definition, "plasma arc treatment" and offered the Board a modified definition by adding: "Section 282.4, plasma arc treatment means the process of, (1) putting waste into an enclosed chamber; (2) treating waste through a noncombustion method; and (3) introducing a high electrical arc that produces intense heat, and (b), breaks down molecules of the waste into their elemental atoms." (Please see pages 33 through 37 of the official transcript of this meeting for a verbatim account of Mr. Slavic's remarks.

Mr. Duggan spoke next. He is the attorney for the Lake County Solid Waste Management District. Mr. Duggan distributed three handouts to the Board. Mr. Duggan cited statutes and legal decisions he said supported solid waste district authority to do what is necessary to provide meaningful input into planning and permitting issues of the district and represent local issues. He also reviewed opinions expressed in the handouts to support removal of certain rule language that conflict with district authority. He concluded by requesting that the Board remove ... "the proposed changes of 329 IAC 11-9-5, which are found on pages six and seven of your packet of the IDEM rule fact sheet, LSA Document #05-297, which changes have the effect of giving the Commissioner the power to make a determination of need for a solid waste facility." Mr. Duggan emphasized that while IDEM does have ultimate permit authority but "with all the authority that is granted to them and all of the emphasis on their plans", districts are "not to be excluded from meaningful input into the process." Please see pages 37 through 43 for a verbatim account of Mr. Duggan's comments.

Mr. Bill Paraskevas, representing the NSWMA, spoke next. Mr. Paraskevas requested the following revisions in 329 IAC 11-3-1(5):

- a. Clarify that the three listed criteria are used to determine that a facility meets the definition, amend the preceding sentence to read, "To qualify, the facility must..."
- b. Define or clarify the term, "substantial" as used in Subsection (A).
- c. Define or clarify the term, "substantial: as used in Subsection (B).

Mr. Paraskevas further commented that the signage at a facility (329 IAC 11-13-3(b)(1)(B)(i) requiring the hours that an employee needs to be present is redundant and not needed.

Please see pages 44 through 46 for a verbatim account of Mr. Paraskevas' remarks.

There being no further public comment, the hearing was concluded. Chairman Graham asked for questions from the Board. Mr. Davis questioned Mr. Slavic who answered that "plasma arc" was used for the destruction of both organic and inorganic waste; hence the request for that particular clarification. Mr. Davis also asked Mr. Duggan if the amendment to the rule was interpreted by the district as eliminating the district from the decision making process in terms of need assessment, to which Mr. Duggan answered affirmatively. Mr. Palin explained that the change proposed (exclusion of transfer stations) was already a legislative change made in the statute. The rule change merely reflects that legislative change.

At this point, there was considerable discussion that centered on the following points regarding determination of need:

- a. How much input does the solid waste district have to determine what facilities are needed? The Commissioner of the IDEM ultimately makes permitting decision; however, approved district plans and other input is taken into consideration.
- b. The amendments clarify that the Commissioner considers findings of the solid waste district and may also seeks out information from the district. It is not the intent of the rule to take away district influence regarding the decision for determination of need, but rather, to provide direction to a district (particularly a district without an approved plan) regarding the kind of information required by the Commissioner to formulate ultimate determination of need.
- c. There is legal action pending on these matters that came from a situation where a district felt that there was no need for a particular facility, a "negative finding". The district felt that it's input was ignored. Mr. Duggan suggested that there be more dialogue between IDEM and the districts to work together to assure that both sides are represented.
- d. Mr. Davis noted that specific changes to rule language were not suggested. What changes can actually be made should not conflict with statute.

Another question came up regarding the signage issue. Ms. Klesmith said that they could work on making required verbiage on posted signs less redundant. One last request was made to further define "substantial" as it is used in the rule.

Finally, discussion evolved into what action should be taken on the rulemaking before the Board. Dr. Tedesco recommended tabling the rule so that comments and confusion regarding the rule could be addressed. A verbatim account of this discussion may be found on pages 48 through 70 of the official transcript of this meeting.

Dr. Tedesco then made a motion to table action on the rule until the next Board meeting. Mr. Davis seconded. The motion passed unanimously.

9. PRELIMINARYADOPTION AMENDMENTS TO RULES At 329 IAC 9 CONCERNING ADDITIONAL MEASURES TO PROTECT GROUND WATER
Mayor Graham announced the public hearing to consider preliminary adoption of #06-182 Amendments to Rules at 329 IAC 9 Concerning Additional Measures to Protect Ground Water. He introduced Exhibit F, the draft rule, into the record and asked Ms. Lynn West to comment on the rule.

Ms. West said that the Federal Energy Policy Act of 2005, Public Law 109-58, which became effective August 8, 2005, contains some additional requirements for underground storage tanks. She outlined requirements for secondary containment and monitoring within 1,000 feet of a community water supply system. She also said that certain definitions were moved so that all definitions would be in alphabetical order.

Dr. Tedesco asked where the 1,000-foot distance came from. Ms. West said that this number was established by federal law and was not arbitrary. These changes are required to maintain Indiana's authorization. Please see pages 71

through 74 of the official transcript of this meeting for a verbatim account of Ms. West's remarks.

Mayor Graham announced that public comment would be offered by Ms. Maggie McShane, Executive Director of the Indiana Petroleum Council (IPC). She was also representing the Indiana Petroleum Marketers and Convenience Store Association (IPCA), and their Executive Director, Mr. Scott Imus.

Ms. McShane first testified on behalf of the IPCA. She said that secondary containment and related distance issues were not contained in any final guidance from the U.S. EPA, so therefore, the authorization would not be threatened if rulemaking could be postponed until final guidance is provided. She also said that there are several financial costs to provide secondary compliance. Ms. McShane also offered an alternative of maintaining financial assurance rather than constructing secondary containment systems.

Ms. McShane then spoke on behalf on the IPC. She offered support for Mr. Imus's position and said that this rulemaking is premature and that financial responsibility or financial assurance as options to secondary containment haven't been considered. She also said that there were several other federal provisions that are not being addressed in the rulemaking.

Mr. Ward asked Ms. McShane if existing petroleum manufacturers and convenience stores are subject to legislation that has been passed. Ms. McShane answered yes; however, with the rulemaking action presented to the Board, other options were not being included. Please see pages 74 through 84 for a verbatim account of Ms. McShane's comments and ensuing discussion.

There were no more questions or comments or comments so the hearing was concluded. Mayor Graham asked for a motion to preliminarily adopt the rule. Mr. Hohman so moved and Dr. Tedesco seconded. The motion passed unanimously.

10. PRELIMINARY ADOPTION ENVIRONMENTAL STEWARDSHIP PROGRAM AND COMPREHENSIVE LOCAL ENVIRONMENTAL ACTION NETWORK

Mayor Graham announced the public hearing to consider preliminary adoption of #05-234, the Environmental Stewardship Program and Comprehensive Local Environmental Action Network. He introduced Exhibit G, the draft Rule, into the record and asked Mr. Dan Murray, Assistant Commissioner of the Office of Pollution Prevention and Technical Assistance of IDEM, to address the Board.

Mr. Murray briefly reviewed the history of the rulemaking activities to date and explained that the purpose of the rule was to provide a systematic way for facilities to manage their environmental responsibilities, improve and reduce their impact on the environment while increasing operational efficiency.

Two programs are created, the Environmental Stewardship Program (ESP) aimed at the manufacturing sector and the Comprehensive Local Environmental Action Network (CLEAN) for municipalities and communities. Participants in the ESP must identify one environmentally beneficial project each year, implement the program, and report on the results. Eligibility requirements are established for participation in the ESP program, i.e., a satisfactory compliance record. Incentives as spelled out in the rule are offered but will be revoked if compliance is not maintained. The steps taken to revoke membership are also clearly

detailed in the rule. Mr. Murray also mentioned that Indiana's program is expected to be more effective in appealing to small and medium-sized manufacturers than the Federal National Environmental Performance Track Program. A grant has been received from the U.S. EPA to implement this program and Mr. Murray said that he planned to focus the grant on assisting small and medium-sized Indiana regulated entities to develop and implement environmental management systems. Please see pages 86 through 95 of the official transcript of this meeting.

At this point, Mayor Graham asked for a ten-minute recess. After the recess, Mayor Graham asked for comment from the R.M. Van Frank, representing Improving Kids' Environment (IKE). Mr. Van Frank said that IKE does support the policy to encourage and recognize environmental activities on the part of both public and private entities. They support providing incentives for recognition, or more personal service. However, IKE does object to promises of lower routine inspections or the elimination of unannounced inspections. Rigorous oversight of the program is necessary to assure that violations don't occur. He also questioned the availability of IDEM's resources to provide additional services. Please see pages 95 through 100 of the official transcript of this meeting for a verbatim account of Mr. Van Frank's remarks.

There were no more commenters or questions from the Board. The hearing was concluded. Mayor Graham asked for a motion to preliminarily adopt the rule. Mr. Hohman so moved and Mr. Frahm seconded. The motion passed unanimously.

11. Mayor Graham then opened the floor to hear from the public on topics of interest and potential rulemaking in Title 329. Deborah Albright, Board Counsel, said that there was confusion about the motion to table #05-297, Amendments to Rules Concerning Solid Waste Processing Facilities at 329 IAC 11. In order to have a motion that meets statutory requirements, action on a rule may be tabled to another meeting, but the time, place and date of the meeting must be stated in the motion. The individual who made the original motion was no longer in attendance. Discussion ensued about what the original motion to table contained, as well as how to proceed. (See pages 103 through 117 of the official transcript of this meeting.) The decision was made to reconsider the motion. Therefore, Mr. Ward made a motion to table Rule #05-297 until the Solid Waste Management Board meeting of November 21, 2006, 1:30 p.m., Indiana Government Center, Conference Center. Mr. Hohman seconded. The motion passed unanimously.

12. ADJOURNMENT

Mayor Graham adjourned the meeting at 3:38.

The next meeting will be November 21, 2006, at 1:30 p.m., at the Indiana Government Center South, Conference Center Room A, 402 West Washington Street, Indianapolis, Indiana.

Technical Secretary